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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/994,585 | 11/27/2001 | Douglas Levinson | 10436-0015-999 | 7294 |

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EXAMINER

BAKER, MAURIE GARCIA

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

1639

DATE MAILED: 08/12/2003

Handwritten signature

Please find below and/or attached an Office communication concerning this application or proceeding.



UNITED STATES DEPARTMENT OF COMMERCE
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| SERIAL NUMBER | FILING DATE | FIRST NAMED APPLICANT | ATTORNEY DOCKET NO. |
|---------------|-------------|-----------------------|---------------------|
| 09/994,585 | 11/27/2001 | Levinson | TPI-T600XC1 |

| EXAMINER | |
|----------------------------|--------------|
| Maurie Garcia Baker, Ph.D. | |
| ART UNIT | PAPER NUMBER |
| 1639 | 8 |

DATE MAILED:

Please find below a communication from the EXAMINER in charge of this application

Commissioner of Patents

Please see attached Notice of Non-Responsive Amendment.

DETAILED ACTION***Notice of Non-Responsive Amendment***

1. The reply filed on June 2, 2003 (Paper No. 5) is not fully responsive to the prior Office action because of the following omission(s) or matter(s):

It is noted that applicant has elected Group III for examination and also set forth an election of species in Paper No. 5. However, applicant's election of species is not fully responsive. It is also confusing and thus it is unclear where the examiner should start the search. This is elaborated upon below.

As stated in paragraph 11 of the Restriction Requirement, if applicant elected the invention of Group III, applicant was required to elect from various species that are patentably distinct. This requirement is reiterated below:

*If applicant elects the invention of **Group III**, applicant is required to elect from the following patentably distinct species. Claims 29 and 46-50 are generic. Election is required from each species and subspecies below.*

Species 1: Samples (all components)

A single, specific species of samples used in the claimed method should be elected, for purposes of search. All components thereof should be defined as follows:

- A. A single form of the sample (e.g. claim 30) and specific "disease-causing substance" (e.g. claim 40) should be elected.
- B. The specific type of medium should also be set forth.
- C. If all samples in the array do not comprise the same "disease-causing substance", then the identity of each should be set forth.
- D. If an "additional component" is present (i.e. claim 33), it should also be specifically elected.

Species 2: Processing of samples

A single, specific species of processing should be elected, for purposes of search, from the following:

- A. Adjusting time of incubation
- B. Adjusting temperature
- C. Adjusting pressure
- D. Subjecting to nucleation event
- E. Subjecting to ultrasound, shock waves, laser energy or mechanical stimulation
- F. Adjusting amount of component
- G. Adding component
- H. Adjusting amount of medium
- I. Adjusting gas composition

Species 3: Difference between samples

A single, specific species of difference between samples should be elected, for purposes of search, from the following:

- A. Identity of components
- B. Amount of components
- C. Physical state of components
- D. Identity of medium
- E. Amount of medium
- F. pH
- G. Gas composition

Species 4: Detection

A single, specific species of detection should be elected, from those set forth in claims 42-45 for purposes of search.

The species are distinct, each from the other, because their structures and modes of action are different. They would also differ in their reactivity and the starting materials from which they are made and/or in their specific steps and elements needed for carrying them out. Therefore, the groups have different issues regarding patentability and represent patentably distinct subject matter.

Applicant has provided adequate elections for Species 1-B, 1-C, 2 and 3. However, the elections for Species 1-A, 1-D and 4 are inadequate and/or confusing for the following reasons.

For Species 1-A, applicant elected a “liquid sample of calcium oxalate”. This is confusing as it appears that applicant may have meant *dissolved* calcium oxalate and not a liquid form of the salt (molten salt?). Or is a solid sample of calcium oxalate in a liquid medium what was meant? See instant claim 30. For species 1-D, the examiner clearly required that if “an “additional component” is present (i.e. claim 33), it should also be *specifically* elected”. Applicant has merely elected “a salt” for this species. This is not a specific election. Moreover, because of this ambiguity, it is unclear which of claims 34 or 35 read on the elected species.

For species 4, the examiner clearly required that a “*single, specific* species of detection should be elected, from those set forth in claims 42-45 for purposes of search”. Applicant has elected polarized light analysis, which is indeed one of the species listed in instant claim 42. However, it is unclear whether the elected species of detection *further*

comprises any other detection as set forth in instant claims 43-45. A specific election of the type of detection (including any "further" steps) is required with a listing of claims reading thereon.

Additionally, paragraph 15 of the Restriction Requirement specifically required **a listing of all claims readable** on the elected species. Applicant has not provided such a listing, which is not responsive to the previous requirement. Thus, to avoid confusion and to aid in the examination of the case on the merits, a fully responsive election is required including a list of claims reading on the elected species.

2. See 37 CFR 1.111. Since the above-mentioned reply appears to be *bona fide*, applicant is given ONE (1) MONTH or THIRTY (30) DAYS from the mailing date of this notice, whichever is longer, within which to supply the omission or correction in order to avoid abandonment. EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136(a).

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Maurie Garcia Baker, Ph.D. whose telephone number is (703) 308-0065. The examiner is on an increased flextime schedule but can normally be reached on Monday-Thursday and alternate Fridays from 9:30 to 7:00.

4. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew J. Wang, can be reached at (703) 306-3217. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306. Any inquiry of

a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

Maurie Garcia Baker, Ph.D.
August 7, 2003

A handwritten signature in black ink, appearing to be 'MGB' with a long horizontal stroke extending to the right.

MAURIE GARCIA BAKER PH.D
PRIMARY EXAMINER